THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

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May 16, 1994

DEFENDANT'S
EXHIBIT 81
6/22/95 S[?]

JP
JEC
BB

Professor Harry Power
67 Myrtle Avenue
North Plainfield, NJ 07060

Dear Professor Power:

As you know, I and certain members of my staff have been conducting an investigation into the complaint of sexual harassment filed against you by Ms. Eileen Maher, a graduate student in the Department of Biological Sciences, on September 3, 1993. You responded to that complaint in a reply delivered to my office on October 9, 1993. My office experienced a great deal of difficulty in scheduling a meeting with you to discuss the complaint and your response, but a meeting was finally scheduled for March 28, 1994, in my office. At that time you were provided with the opportunity to add anything to your reply that you wished.

I have determined, on the basis of the investigation conducted by me and by members of my staff, that you have engaged in sexually harassing behavior with regard to Ms. Eileen Maher. I therefore intend to take the following actions:

--You will not be permitted to be alone with undergraduate or graduate students, male or female, on an individual basis, for at least three years, and only then if there have been no complaints regarding your behavior or your comments in class. Students will not be able to sign up for independent study or independent research with you; you will be assigned no graduate students or postdoctoral students. No students will be permitted to work on your grants. Office hours for your courses will be held in some public area in the Department of

Biological Sciences, where you can be observed. You will not be assigned teaching assistants or graders.

--Teaching evaluations of both your undergraduate and graduate classes will be conducted each semester. The evaluations will be closely monitored by the department and by my office for any indications of sexually inappropriate comments, or other inappropriate comments or behavior.

--You will not be evaluated for promotion to full professor for at least three years; the earliest such consideration will take place will be academic year 1997–98. You will only be considered in that year if there have been no reports of sexually inappropriate behavior, or otherwise offensive behavior, in the classroom or out.

--The department chair, the graduate program director, the dean and associate deans of the Graduate School, and the associate deans of FAS, will all be informed of this finding insofar as it applies to their respective areas of oversight, and will be responsible for ensuring that it is upheld in their areas.

I cannot overemphasize how disturbed I am by what I read and heard regarding your behavior. It is my hope that these findings will both safeguard those around you and encourage you to alter your behavior for the better, so that you can return to the customary duties of a faculty member at this University.

Sincerely,

/s/
Richard Foley
Dean

bc: J. Ambrose
B. Bender
J. Creeden
E. Dennis
D. Denhardt
S. Hall
N. Koller
F. Loren
T. Meagher
J. Potenza
K. Stubaus

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Office of the Provost and
Grad[?]

MAY 18 1994

SEXUAL HARASSMENT AND ACADEMIC FREEDOM

A Statement of the National Association of Scholars

Sexual harassment is always contemptible. Because it also subverts education, it is particularly damaging in an academic setting.

The National Association of Scholars believes that college and university authorities should respond to instances of sexual harassment promptly and firmly. Tenure does not protect faculty members found guilty of coercing sexual favors. Nor is academic freedom an impediment to the effective enforcement of prohibitions against lesser forms of harassment, such as inappropriate touching, that also exploit individuals and undermine the educational process. Such behavior constitutes a serious violation of an educator's responsibilities and is morally wrong. It cannot be tolerated.

However, academic freedom and the rights of individuals can be — and have been — violated by misguided efforts to combat sexual harassment. Too many institutions have adopted vague definitions of harassment that may all too easily be applied to attitudes or even to a scholar's professional views. Not surprisingly, a chill has descended on academic discussions of sensitive but legitimate topics, such as human sexuality, sex differences, and sexual roles. Worse, procedures have been widely adopted that violate the canons of due process. In a number of cases, the reputations and careers of innocent persons have been severely damaged as a result of unwarranted actions taken by colleges and university authorities.

Specifically:

- The criteria for identifying "harassment" are often nebulous, allowing for expansive interpretation of its meaning. For example, at one major public university, the official definition stated that "Sexual harassment can be as blatant as a rape or as subtle as a look. Harassment . . . often consists of a callous insensitivity to the experience of women"; in another

official publication the university further advised that sexual harassment "is broadly defined to include behavior that may not be considered overtly sexual." Language like this can only breed confusion, resentment, and injustice.

- When definitions of sexual harassment are expanded to include opinions and attitudes, academic freedom is violated. Such definitions have already significantly inhibited discussion inside and outside the classroom. Ambiguous phrases like "callous insensitivity to the experience of women" have inspired complaints against professors accused of slighting gender-based literary analysis, or who have discussed theories and findings, such as Freud's, that run counter to the prevailing consensus about sexual differences.

- Some definitions of sexual harassment embrace a wholly subjective test of its occurrence — for example, the complainant having been made to "feel uncomfortable." Proof relies not on the objective behavior of the alleged harasser but on how one person perceived that behavior.

- Charges of sexual harassment are sometimes entertained long after the alleged offense, when the memories of the parties have faded, their motives have altered, and evidence has been lost.

- Mid-level administrators with meager academic experience but a strong commitment to fashionable causes are frequently accorded a major role in drawing up harassment regulations, interpreting them, counseling complainants, investigating charges, administering hearings, and determining guilt and penalties. Sometimes one and the same person performs all of these functions and, in addition, encourages students and others to make harassment charges. This leads to violations of academic due process.

- Investigations of alleged sexual harassment can provide a pretext for engaging in the ideological persecution of persons whose views are out of favor. When amorphous harassment regulations are enforced over-zealously, they encourage frivolous or self-serving charges from discontented or vindictive individuals.

- Collective penalties have been imposed on entire academic departments and groups of students for the actions, not always proven, of a few individuals. At one prestigious private university, every student, faculty member, and staff member was ordered to attend a three-hour seminar on sexual harassment because a federal agency found fault with the university's judgment in a case involving a single alleged harasser. It need hardly be said that finding persons guilty by association, or making a whole category responsible for actions committed by one or a few, violates the principle of individual responsibility basic to our society. It is likely to arouse resistance against efforts to combat genuine sexual harassment.

- Some of the sanctions now in force aim at thought reform, frequently through compulsory "sensitivity training" programs. These programs often operate to humiliate those suspected of holding "incorrect views." They also frequently suggest that being white, male, or heterosexual constitutes a presumption of guilt. When *required* for faculty or students, these programs constitute an assault on individual dignity and freedom.

What we are witnessing, in short, is the transformation of a clear behavioral offense into a ubiquitous "thought crime" and the substitution of psychological manipulation for rational discussion. The resulting confusion of genuine harassment with less serious acts, and even with beliefs, brings anti-harassment policy into needless conflict with academic freedom. This confusion is bound to diminish the opprobrium that

rightly attaches to sexual harassment. In the interest of protecting students and staff from genuine harassment and of preserving academic freedom, the NAS urges institutions of higher education to:

- define sexual harassment precisely, confining it to individual behavior that is manifestly sexual and that clearly violates the rights of others
- set a reasonable statute of limitations on bringing sexual harassment charges
- separate the offices of investigator, prosecutor, judge, and jury; observe the requirements of due process; and ensure the right of the accused to make an adequate defense
- punish those who knowingly lodge false accusations of harassment, and
- act against proven harassers forcefully, by dismissal if necessary, instead of coercing opinions and restricting speech

Anything less fails to protect students, faculty, and staff from sexual harassment. Anything more threatens individual freedoms and, most conspicuously, academic freedom.

For additional information about the NAS and its activities, including its research center, speakers bureau, search service, newsletter, state and regional affiliates, conferences, fellows program, local events, and the quarterly *Academic Questions,* write to the **National Association of Scholars, 575 Ewing Street, Princeton, New Jersey 08540**, or call **609-683-7878**.

For Reasoned Scholarship in a Free Society